

REMARKS

Claims 1-59 were examined and stand rejected or objected to. Applicants hereby cancel claims 53-59 without prejudice. Claim 41 is amended. Claims 60-71 are newly added. Therefore, claims 41-52 and 60-71 are presented for examination. The amendments add no new matter. Support is found in canceled claim 59.

Reconsideration of the application in view of the current claims is respectfully requested and further in view of the following Remarks.

I. CLAIM REJECTIONS UNDER 35 U.S.C. § 102

A. REJECTION UNDER 35 U.S.C. § 102(B) OVER WWW.YOUTUBE.COM/WATCH?v=AT1_Rkl0B1M, WWW.EARTHCLINIC.COM/REMEDIES/HYDROGEN_PEROXIDE_INHALATION.HTML AND WWW.LANDRIGHTS.COM/HYDROGEN_PEROXIDE.HTM

Claims 41, 47 and 53 stand rejected under 35 U.S.C. §102(b) as being anticipated by www.youtube.com/watch?v=aT1_Rkl0B1M (“Munro instructional video”), www.earthclinic.com/Remedies/hydrogen_peroxide_inhalation.html (“Munro earth clinic”) and www.landrights.com/Hydrogen_Peroxide.htm (“Munro land rights”). Applicant requests reconsideration.

Applicant has amended claim 41 to include a “mouthpiece” as an element. The Examiner has acknowledged that none of the three references shows an inhaler comprising a mouthpiece. Because the references do not show all of the elements of claims 41 or claim 47, which depends from claim 41, the references cannot have anticipated the claims.

Applicant has canceled claim 53 without prejudice. This renders the rejection of this claim moot.

Also, Applicant does not agree that any of the three references constitute prior art under 35 U.S.C. §102(b). First, there is no evidence that any of these websites was posted before the date to which this application claims priority. Therefore, the sites are not, themselves, prior art. Second, to the extent that they contain assertions by Mr. Bill Munro to having used a device to spray a composition comprising hydrogen peroxide into his mouth, such uses cannot be considered “public

uses” under the patent law. Mr. Munro does not assert that he or anyone else ever used the device publicly. The video appears to have been made in a house, which is not a public place and does not constitute a public use. Therefore, any uses appear to be private uses. Furthermore, there is no evidence that Mr. Munro discussed his invention with anyone before the priority date of this application. In view of this, the references do not provide evidence of public use before the priority date of this application.

For these reasons, Applicant respectfully requests the Examiner to withdraw the rejections for anticipation.

II. DOUBLE PATENTING

The Examiner stated that if claims 41-46 are found allowable, then claims 53-58 would be rejected for statutory type double patenting. Applicant requests reconsideration.

Applicant has canceled claims 53-58 without prejudice to pursue these claims in an application claiming priority hereon. This renders the rejection moot.

Applicant is not aware of any precedent holding that independent claims with overlapping scope in a single patent application are subject to a double patenting rejection. The statute states that a person may obtain a patent for an invention. If the present application issues, it will constitute a patent, not more than one patent. Nevertheless, without acceding to the Examiner’s rejection, and in order to advance prosecution, Applicant has canceled claims 53-58.

For these reasons, Applicant respectfully requests the Examiner to withdraw the rejection.

III. ALLOWABLE SUBJECT MATTER

The Examiner stated that claims 42-46, 48-52 and 53 [sic, 54?]-59 are objected to as being dependent upon a rejected base claim. Applicant appreciates the recognition of allowable subject matter. Applicant has amended the sole remaining independent claim, claim 41, to include a mouthpiece as an element. The Examiner noted that the references cited above did not show this element. Accordingly, present claims 42-46, 48-52 and 60-71 depend from a claim that, itself, is not anticipated by the cited art.

Therefore, Applicant believes that the claims are now in condition for allowance.

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Gregory E. Conner
Response to Office Action dated February 1, 2010

Docket No.: 1004-001.CIP

CONCLUSION

In view of the amendments and remarks above, Applicant respectfully requests the Examiner to withdraw the rejections and move this case to allowance.

The Commissioner is authorized to charge any fees associated with this filing to Deposit Account No. 50-4950. If the Examiner would like to discuss any aspect of the action, he is invited to call John Storella at 510-501-0567.

Respectfully submitted,

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